

# VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

## CHAPTER 639

*An Act to amend and reenact § 23-38.81 of the Code of Virginia, relating to ABLE savings trust accounts; exclusion from determination of state means-tested assistance and benefits.*

[H 1103]

Approved April 1, 2016

**Be it enacted by the General Assembly of Virginia:**

**1. That § 23-38.81 of the Code of Virginia is amended and reenacted as follows:**

**§ 23-38.81. Prepaid tuition contracts and college and ABLE savings trust agreements; terms; termination; etc.**

A. Each prepaid tuition contract made pursuant to this chapter shall include the following terms and provisions:

1. The amount of payment or payments and the number of payments required from a purchaser on behalf of a qualified beneficiary;
2. The terms and conditions under which purchasers shall remit payments, including the dates of such payments;
3. Provisions for late payment charges, defaults, withdrawals, refunds, and any penalties;
4. The name and date of birth of the qualified beneficiary on whose behalf the contract is made;
5. Terms and conditions for a substitution for the qualified beneficiary originally named;
6. Terms and conditions for termination of the contract, including any refunds, withdrawals, or transfers of tuition prepayments, and the name of the person or persons entitled to terminate the contract;
7. The time period during which the qualified beneficiary must claim benefits from the Plan;
8. The number of credit hours or quarters, semesters, or terms contracted for by the purchaser;
9. All other rights and obligations of the purchaser and the trust; and
10. Any other terms and conditions which the Board deems necessary or appropriate, including those necessary to conform the contract with the requirements of Internal Revenue Code § 529, as amended, which specifies the requirements for qualified state tuition programs.

B. Each college savings trust agreement made pursuant to this chapter shall include the following terms and provisions:

1. The maximum and minimum contribution allowed on behalf of each qualified beneficiary for the payment of qualified higher education expenses at eligible institutions, both as defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law;
2. Provisions for withdrawals, refunds, transfers, and any penalties;
3. The name, address, and date of birth of the qualified beneficiary on whose behalf the savings trust account is opened;
4. Terms and conditions for a substitution for the qualified beneficiary originally named;
5. Terms and conditions for termination of the account, including any refunds, withdrawals, or transfers, and applicable penalties, and the name of the person or persons entitled to terminate the account;
6. The time period during which the qualified beneficiary must use benefits from the savings trust account;
7. All other rights and obligations of the contributor and the Plan; and
8. Any other terms and conditions which the Board deems necessary or appropriate, including those necessary to conform the savings trust account with the requirements of § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

C. Each ABLE savings trust agreement made pursuant to this chapter shall include the following terms and provisions:

1. The maximum and minimum annual contribution and maximum account balance allowed on behalf of each qualified beneficiary for the payment of qualified disability expenses, as defined in § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law;
2. Provisions for withdrawals, refunds, transfers, return of excess contributions, and any penalties;
3. The name, address, and date of birth of the qualified beneficiary on whose behalf the savings trust account is opened;
4. Terms and conditions for a substitution for the qualified beneficiary originally named;
5. Terms and conditions for termination of the account, including any transfers to the state upon the death of the qualified beneficiary, refunds, withdrawals, transfers, applicable penalties, and the name of the person or persons entitled to terminate the account;
6. The time period during which the qualified beneficiary must use benefits from the savings trust

account;

7. All other rights and obligations of the contributor and the Plan; and

8. Any other terms and conditions that the Board deems necessary or appropriate, including those necessary to conform the savings trust account with the requirements of § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

D. In addition to the provisions required by subsection A, each prepaid tuition contract shall include provisions for the application of tuition prepayments (i) at accredited, nonprofit, independent institutions of higher education located in Virginia, including actual interest and income earned on such prepayments and (ii) at public and at accredited, nonprofit, independent institutions of higher education located in other states, including principal and reasonable return on such principal as determined by the Board. Payments authorized for accredited, nonprofit, independent institutions located in Virginia may not exceed the projected highest payment made for tuition at a public institution of higher education in Virginia in the same academic year, less a fee to be determined by the Board. Payments authorized for public and for accredited, nonprofit, independent institutions of higher education located in other states may not exceed the projected average payment made for tuition at a public institution of higher education in Virginia in the same academic year, less a fee to be determined by the Board.

E. All prepaid tuition contracts and savings trust agreements shall specifically provide that, if after a specified period of time the contract or savings trust agreement has not been terminated nor the qualified beneficiary's rights exercised, the Board, after making reasonable effort to contact the purchaser or contributor and the qualified beneficiary or their agents, shall report such unclaimed moneys to the State Treasurer pursuant to § 55-210.12.

F. Notwithstanding any provision of law to the contrary, money in the Plan shall be exempt from creditor process and shall not be liable to attachment, garnishment, or other process, nor shall it be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of any purchaser, contributor or beneficiary, provided, however, that the state of residence of the beneficiary of an ABLE savings trust account shall be a creditor of such account in the event of the death of the beneficiary.

*G. Notwithstanding any other provision of state law that requires consideration of one or more financial circumstances of an individual for the purpose of determining (i) the individual's eligibility to receive any assistance or benefit pursuant to such provision of state law or (ii) the amount of any such assistance or benefit that such individual is eligible to receive pursuant to such provision of state law, any (a) moneys in an ABLE savings trust account for which such individual is the beneficiary, including any interest on such moneys, (b) contributions to an ABLE savings trust account for which such individual is the beneficiary, and (c) distribution for qualified disability expenses for such individual from an ABLE savings trust account for which such individual is the beneficiary shall be disregarded for such purpose with respect to any period during which such individual remains the beneficiary of, makes contributions to, or receives distributions for qualified disability expenses from such ABLE savings trust account.*

H. No contract or savings trust account shall be assigned for the benefit of creditors, used as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge.

~~H. I.~~ The Board's decision on any dispute, claim, or action arising out of or related to a prepaid tuition contract or savings trust agreement made or entered into pursuant to this chapter or benefits thereunder shall be considered a case decision as defined in § 2.2-4001 and all proceedings related thereto shall be conducted pursuant to Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act. Judicial review shall be exclusively provided pursuant to Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.